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CIV3701 May June 2022

Civil Procedure (University of South Africa)

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UNIVERSITY EXAMINATIONS

UNISA university of south africa

May/June 2022

CIV3701

Civil Procedure

100 Marks
Duration 4 Hours

Examiners:
First: **Ms MP Mothapo** **Ms M Mkhabela**
Second: **Adv MB Ndlazi**

This paper consists of 6 pages.

CONFIDENTIAL

INSTRUCTIONS FOR A TAKE-HOME EXAM ON MYEXAMS

PLEASE READ THE FOLLOWING INSTRUCTIONS CAREFULLY BEFORE ANSWERING THE EXAMINATION QUESTIONS.

1. The examination question paper counts **100 marks.**

2. It consists of several questions. Answer **ALL** of the questions.

3. The duration of the examination is **4 hours**. Your answers must be submitted via myExams platform on **19/05/2022** on or before **12:00** (South African Standard Time).

4. This a **closed-book examination**. While the examination is in progress, you are not allowed to consult another person or any source in order to assist you to answer any of the questions contained in this question paper. While the examination is in progress, you may not assist another student in answering any of the questions contained in this question paper.

5. Your answer to this take-home examination must be submitted online on the myExams platform. See instruction and QR code on page 3.

5.1 Access myExams at https://myexams.ac.za/portal and login using your student number and myUnisa password.

5.2 Go to your specific examination site through the site tabs on the horizontal navigation bar. Also check your **Sites** link in the top right-hand corner if you do not find the site on the horizontal navigation bar.

5.3 Once the site has loaded, select the **eAssessment** tool from the left-navigation menu.

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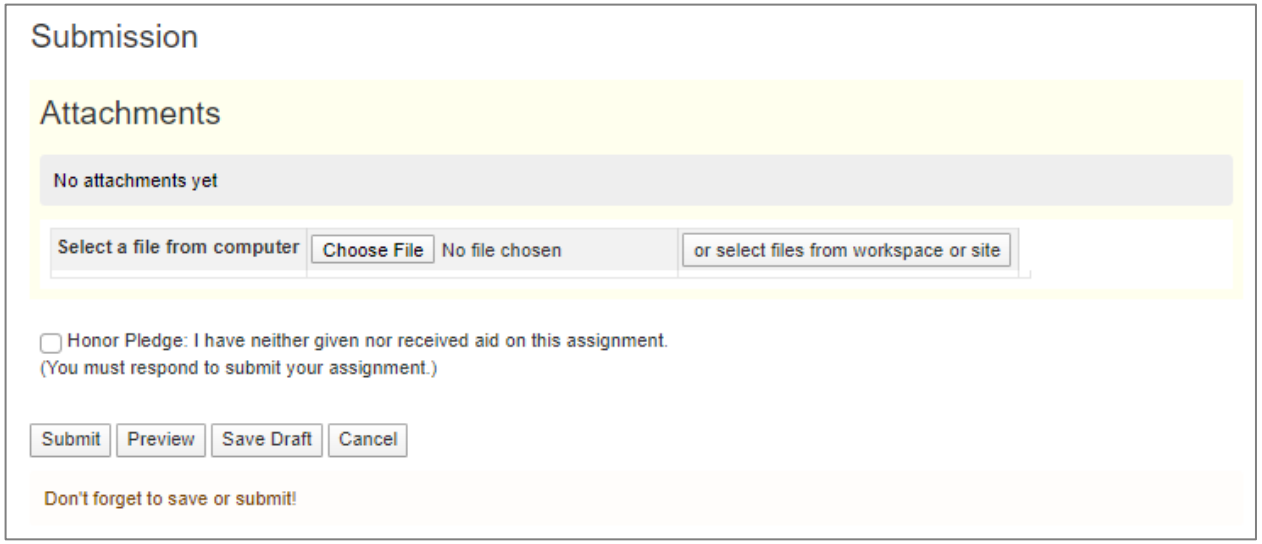
5.4 The list of all available assessments in the site will be displayed.

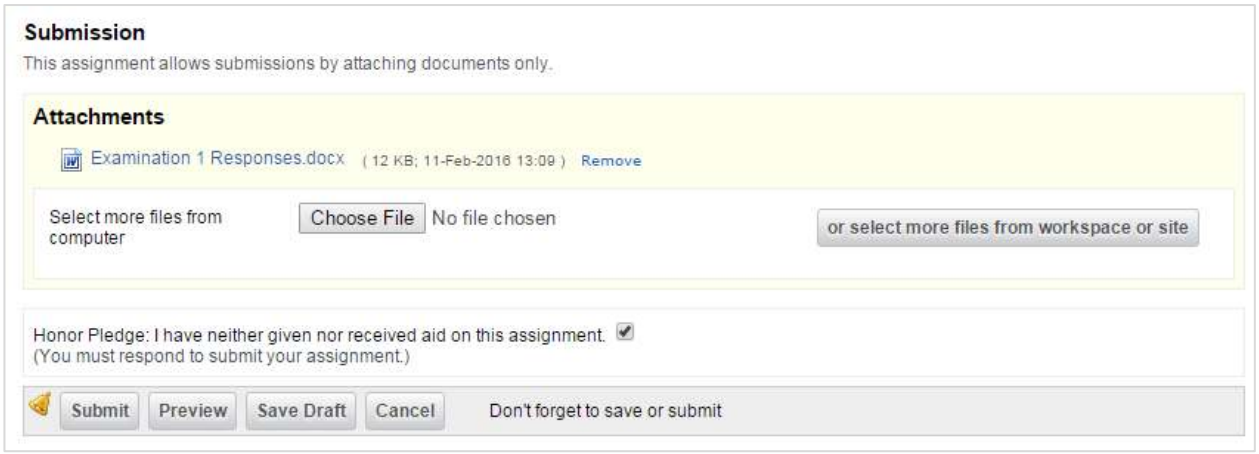
5.5 Select the assessment for which you want to upload the examination answer file by **clicking on the title of the assessment** in the list. A new page will open.

5.6 Submit your examination answer file.



Depending on the assessment criteria, you may be allowed to attach a file or perhaps multiple files.

Under **Attachments**, click the **Choose File** button to browse for a file on your device.


Submission
This assignment allows submissions by attaching documents only.
Attachments
Examination 1 Responses.docx
(12 KB; 11-Feb-2016 13:09)
Remove
Select more files from computer
Choose File
No file chosen
or select more files from workspace or site
Honor Pledge: I have neither given nor received aid on this assignment.
(You must respond to submit your assignment.)
Submit
Preview
Save Draft
Cancel
Don't forget to save or submit

Once you have attached your answer file, the name of the file, as well as the file size and upload time stamp will be displayed under **Attachments**.

Tip: You may click **Remove** to remove the attachment if you selected the wrong file.

Tip: Select the **honour pledge**. Students MUST check the honour pledge before submission if it appears on the screen. A student will not be able to submit the assessment if he/she did not check the honour pledge.

When you are ready and satisfied that you have correct answer file, click the **Submit** button to complete your assessment submission.

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The Invigilator

	CIV3701
Date:	**19 May 2022**

INSTRUCTIONS ON THE DAY OF ASSESSMENT:

- Ensure you are connected to the internet in order to log into the Invigilator App and scan this QR code.
- If you encounter difficulty in scanning the QR code, you can alternatively enter the Exam Access Code below the QR code to start the invigilation.
- Unless otherwise specified by your institution, note that you can only scan this QR code once. If your assessment has multiple online sections, tests or attempts, you should NOT finish the invigilation until your entire assessment has been completed.
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YOUR EXAM QR CODE & EXAM ACCESS CODE

Exam Access Code: 7d1c1ebe

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INTRODUCTORY STUDIES

QUESTION 1

(a) When determining why a Magistrates' Court has jurisdiction to hear a matter, the question is answered by reference to sections 28, 29 and 46 of the Magistrates' Courts Act, 32 of 1944, and not on the grounds of common law jurisdiction. Explain why this is the case. (6)

(b) Briefly discuss an application to set aside irregular proceedings. (6)

(c) What is the meaning of the term "whole cause of action"? (4)

(d) Does the plaintiff have a recourse to the transfer of a case from lower courts to the High Court? (4)

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HIGH COURT JURISDICTION AND PROCEDURE

QUESTION 2

(a) J learns that K, who is a journalist for Sunday Times newspaper, is in possession of and is about to publish J's photos in a very compromising situation the following day.

(i) **Name** the type of application that J must use in order to prevent K from publishing the photographs. (1)

(ii) **Name** the affidavits that must be exchanged between the parties. (3)

(iii) **Nam**e the procedure that J may use if K's affidavit contains inadmissible evidence. (1)

(b) B wishes to obtain a divorce from her husband M. Merely state the correct answer to each question that follows. **You must not give reasons for your answers**.

(i) What type of summons must B use to institute the action? (1)

(ii) How will the summons be served on M if he is in Namibia? (1)

(iii) What document can B sign whereby authorising her attorney to act on her behalf? (1)

(iv) What is the first process that M must file if he wishes to oppose the divorce proceedings? (1)

(v) What pleading must M file in order to raise his defence? (1)

(vi) What procedure should a party use if the name of one of the minor children is stated incorrectly in the plea? (1)

(vii) What procedure can B use if M files a plea that contains a scandalous statement about B? (1)

(viii) What pleading can B file if M raises new averments in his plea? (1)

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(ix) What proceedings may B use after pleadings have closed in order to establish what documents M will raise as evidence at trial? (1)

(x) What form of cost order will B request if she is of the opinion that M seriously misconducted himself during the course of proceedings? (1)

[15]

QUESTION 3

(a) S and T attend a conference for law lecturers in Cape Town. While delivering his paper, S shares a joke with the audience about T. The joke is defamatory, and T is not happy about it. The following day, T gets a call from his wife in Johannesburg about the joke which had been published in the newspaper *Sowetan*. Both S and T live in Mamelodi (Pretoria). T confronts S in his hotel room and later stones his car. The damages to repair the car amount to R500 000. S is unhappy about the whole situation and wants to sue for the damages. With these facts in mind, answer the following questions and **give full reasons for your answers:**

(i) Will the Western Cape High Court, Cape Town; Gauteng Division, Pretoria; or Gauteng Local Division, Johannesburg have jurisdiction to hear the matter against Thabo? (6)

(ii) Assume that T is an American resident and has a holiday home in Durban. Will the Gauteng Division, have jurisdiction in the matter? (4)

(iii) Will your answer to (ii) above change if T consents to the Gauteng Division, Pretoria? Your answer should refer to applicable case law. (5)

(b) X and Y have been married to each other for 2 Years. They both reside in Botswana. Y is sent to Durban for employment. Whilst in Durban for 13 months, Y decides to divorce X. With these facts in mind answer the following questions:

(i) Will the KwaZulu-Natal local Division, Durban have jurisdiction on the matter? (3)

(ii) Does Y have a choice to institutes the proceeding in a Regional or District Magistrates' Court? (2)

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MAGISTRATES' COURTS JURISDICTION AND PROCEDURE

QUESTION 4

(a) **Discuss** under what circumstances the court will grant request for amendment of pleadings. (4)

(b) **Name** the judgments which a court may grant after the plaintiff and the defendant have closed their respective case and presented argument. (3)

(c) List any **three** items that are exempt from execution in terms of section 67 of the Magistrate's Court Act of 1944. (3)

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(d) A drives through a red traffic light and collides with B's motor vehicle. B suffers damages in the amount of R420 000. B lives and works in Johannesburg. A lives in Pretoria. B wishes to issue summons against A in the Magistrates' Court for damages suffered.

(i) Explain whether any Regional Magistrates' Court will be competent to exercise jurisdiction? (3)

(ii) Assume on the same facts that A owes B an amount of R20 000 for service rendered by B to A, the amount which A admits. Will your answer in (i) above differ? Explain (2)

[15]

QUESTION 5

(a) X enters into a contract with Y in Pretoria. In terms of the contract, Y will build a house for X in Soweto. X pays Y R400 000 for the project. Y resides in Krugersdorp. Y fails to finish building the house and refuses to do so. X wants Y to finish building the house. Will any Magistrates' Courts mentioned herein be competent to force X to finish building the house? (5)

(b) B owns property in Durban, which she has rented to A. The monthly rental is R30 000. A is four months in arrears, and B suspects that A plans to leave the property to avoid paying the arrear rentals in the amount of R120 000. Advise B regarding the steps she may take to recover payment of the arrear rental. (5)

(c) N, who lives in Johannesburg, buys a truck for R190 000 from T in Bloemfontein. T lives in Bloemfontein. N pays T R160 000 of the purchase price and undertakes to pay the balance of R30 000 on delivery of the truck. T delivers the truck to N's home, but despite demand, N fails to pay the balance of the purchase price. Will any Magistrates' Court in all the centres mentioned above have jurisdiction to hear an action instituted by T against N for the return of the truck? Give detailed reasons for your answer. (5)

[15]

APPEAL, REVIEW AND VARIATION OF JUDGMENT

QUESTION 6

(a) If X appeals against the judgment of a single judge, may Y, the plaintiff, execute this judgment given in his favour? (4)

(b) Name the procedure that must be followed when variation of judgment is sought in terms of Rule 42 of the Uniform Rules of Court. (1)

(c) Discuss the meaning of the term "review". (5)

(d) Briefly explain why the Constitutional Court may be approached directly on appeal from any other court. (1)

(e) Name the grounds upon which a judgment will be set aside in the High Court in terms of the common law. (4)

[15]

TOTAL: [100]

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